

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Case Number: **8:11-bk-10103-MGW**
Chapter: **13**

RAUL A. ARIAS
YAMILA ARIAS

Debtors

**MOTION TO DETERMINE SECURED STATUS OF WELLS FARGO BANK,
N.A., AND TO STRIP SECOND LIEN EFFECTIVE UPON DISCHARGE
AND REQUEST FOR ATTORNEY FEES**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

PURSUANT TO LOCAL RULE 2002.4, THE COURT WILL CONSIDER THIS MOTION WITHOUT FURTHER NOTICE OR HEARING UNLESS A PARTY IN INTEREST FILES AN OBJECTION WITHIN THIRTY (30) DAYS FROM THE DATE OF SERVICE OF THIS PAPER. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PAPER, YOU MUST FILE YOUR OBJECTION WITH THE CLERK OF THE COURT AT 801 N. FLORIDA AVENUE, #727, TAMPA, FL 33602-3899, AND SERVE A COPY ON THOMAS A. NANNA, 8910 N. DALE MABRY HWY., #1, TAMPA, FL 33614.

IF YOU FILE AND SERVE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT WILL SCHEDULE A HEARING AND YOU WILL BE NOTIFIED. IF YOU DO NOT FILE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT WILL CONSIDER THAT YOU DO NOT OPPOSE THE GRANTING OF THE RELIEF REQUESTED IN THE PAPER, WILL PROCEED TO CONSIDER THE PAPER WITHOUT FURTHER NOTICE OF HEARING AND MAY GRANT THE RELIEF REQUESTED.

COME NOW, RAUL A. ARIAS AND YAMILA ARIAS, through the undersigned attorney, and file this Motion to Determine Secured Status of Wells Fargo Bank, N.A., ("Wells Fargo"), and to Strip Second Lien Effective upon Discharge and Request for Attorney Fees and state:

1. The Debtors instituted this case by the filing of a Voluntary Petition under Chapter 13 of the Bankruptcy Code on May 26, 2011.
2. This Court has jurisdiction over this Motion under 28 U.S.C. Section 1334. This matter is a core proceeding under 28 U.S.C. Section 157(b)(2).

3. The Debtors own real property located at

4535 Beacon Drive, Sarasota, FL 34232

and more particularly described as follows:

Legal Description—Lot 1390, Sarasota Springs, Unit No. 12, according to the plat thereof recorded in Plat Book 8, Page 42, of the Public Records of Sarasota County, Florida.

4. The Real Property is encumbered by two mortgages.
5. Wells Fargo Bank, N.A. ("Wells Fargo"), account number XXXXXXXX9559, holds the first mortgage, recorded on March 03, 2005, at Book 00, Page 00, Instrument No. 2005043721 of the Official Records of Sarasota County, Florida.
6. Wells Fargo filed Proof of Claim No. 18 in connection with the first mortgage on the Property in the amount of \$225,697.22.
7. Wells Fargo, account number XXXXXXXX3578, holds a second mortgage, recorded on January 19, 2007, at Book 00, Page 00, Instrument No. 2007010104 of the Official Records of Sarasota County, Florida.
8. Wells Fargo failed to file a proof of claim in connection with the second mortgage.
9. Wells Fargo holds a balance on the second mortgage of \$80,128.28. See Exhibit "A."
10. The Just Market Value of the Property is \$117,100.00 as evidenced from the Sarasota County Tax Collector. See Exhibit "B."
11. Accordingly, Wells Fargo's second mortgage is wholly unsecured.
12. The undersigned requests an additional \$275.00 for the fees and costs associated with the instant motion.

Dec 15 2011 11:57AM Law Office - Thomas Nanna 813-935-3528

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WHEREFORE, the Debtors respectfully request that the Court enter an Order: (a) granting the Motion; (b) determining the value of the Real Property to be \$117,100.00; (c) determining that Wells Fargo's second mortgage shall be treated as an unsecured claim; (d) voiding the mortgage lien of Wells Fargo effective upon discharge; (e) awarding an additional \$275.00 in attorney fees and (f) granting such other and further relief as the Court deems appropriate.

Dated: December 15, 2011

Respectfully submitted,

/s/ Thomas A. Nanna
THOMAS A. NANNA

We, RAUL A. ARIAS AND YAMILA ARIAS, hereby certify under the penalty of perjury that the above statements are true and correct to the best of our knowledge, information and belief.

/s/ Raul A. Arias
RAUL A. ARIAS

Date: December 15, 2011

/s/ Yamil A. Arias
YAMILA ARIAS

Date: December 15, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion has been furnished via Certified Mail, Return Receipt Requested to: Wells Fargo Bank, N.A., c/o President & CEO- John G. Stampf, 420 Montgomery St., San Francisco, CA 94163; and via US mail or Electronic Delivery to: Registered Agent for Wells Fargo Bank, N.A., Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301; Wells Fargo Bank, N.A., c/o Joe M. Lozano, Jr., P.O. Box 829009, Dallas, TX 75382-9009; Brice, Vander Linden & Wernick, P.C., Authorized Agent for Wells Fargo, c/o Joe M. Lozano, Jr., 9441 LBJ Freeway, Suite 350, Dallas, TX 75243 and Terry Smith, PO Box 6099, Sun City Center, FL 33571 on the 16 of December, 2011.

/s/ Thomas A. Nanna

THOMAS A. NANNA, ESQ. - FLA BAR NO. 45543
LAW OFFICE OF THOMAS A. NANNA, P.A.
8910 N. DALE MABRY HIGHWAY- SUITE 1
TAMPA, FL 33614
Phone (813) 935-8388/ Fax (813) 935-3528

12/14/2011 1:51:34 PM -0700 ENTERPRISE FAX

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Wells Fargo Servicing Center
1 Home Campus
MAC X2303-01*
Des Moines, IA 50328

DECEMBER 2, 2011

TYLER HAMMOCK
WELLS FARGO BRANCH-VILLAGE PLAZA STORE
FAX 941-361-5848

Customer: RAUL ARIAS LOPEZ
Account #: 01320101001073578
Collateral: 4595 BEACON DR

Dear RAUL:

As you requested, we have calculated the payoff amount on the account referenced above. The payoff amount is \$80,128.28 and is good through December 2, 2011. After that date, the payoff amount will include additional interest at the rate of \$0.00 per day.

Please note that this letter is being sent to you for Informational Purposes Only and is not an attempt to collect this obligation from you personally.

Payment may be sent via regular mail to the following address:

Wells Fargo Bank, National Association
P. O. Box 45038
Jacksonville, FL 32231-5038

Or via overnight mail to:

Wells Fargo Bank, National Association
Metro Square Office Park
Bldg D 1st Floor Suite 4008
3563 Phillips Highway
Jacksonville, FL 32207

If you should have any further questions regarding this matter, please feel free to call me at 800-241-0039, between the hours of 7:30 a.m. and 6:00 p.m., Monday through Friday.

Spanish Language Customer Assistance: Esta comunicación contiene información importante sobre su cuenta. Si tiene alguna pregunta o necesita ayuda para traducir la información incluida en esta comunicación, por favor llame al 800-241-0039.

Sincerely,

Bryce Ulin
Bankruptcy Specialist

572315 (Rev 01)

EX "A"

(01/08) Payoff CH7
Bankruptcy

Sarasota County Tax Collector

generated on 12/15/2011 11:51:41 AM EST

Tax Record

Last Update: 12/15/2011 11:50:59 AM EST

Ad Valorem Taxes and Non-Ad Valorem Assessments

The information contained herein does not constitute a title search and should not be relied on as such.

Account Number		Type Tax		Tax Year	
0063-05-0091		REAL ESTATE		2011	
Mailing Address			Property Address		
ARIAS RAUL A ARIAS YAMILA J 4535 BEACON DR SARASOTA FL 34232			4535 BEACON DR 001		
Base Exempt Amount		Taxable Value			
see below		see below			
Exemption Detail		Millage Code		Escrow Code	
HX 25000		0100		380000	
H2 25000					
Legal Description					
4535 BEACON DR LOT 1393 SARASOTA SPRINGS UNIT 12					
Ad Valorem Taxes					
Taxing Authority	Rate	Assessed Value	Exemption Amount	Taxable Value	Taxes Levied
Sarasota Co. General Revenue	3.0744	117,100	50,000	\$67,100	\$206.29
Bonds-Debt Service	0.2363	117,100	50,000	\$67,100	\$15.86
Mosquito Control	0.0277	117,100	50,000	\$67,100	\$1.86
Sarasota Memorial Hospital	1.0863	117,100	50,000	\$67,100	\$72.89
SW FL Water Management Dist.	0.3928	117,100	50,000	\$67,100	\$26.36
West Coast Inland Navigation	0.0394	117,100	50,000	\$67,100	\$2.64
Sarasota School Board					
School District Fund	6.1350	117,100	25,000	\$92,100	\$565.03
School Capital Impr	1.5000	117,100	25,000	\$92,100	\$138.15
Emergency Medical Services	0.6600	117,100	50,000	\$67,100	\$44.29
Total Millage		13.1519	Total Taxes		\$1,073.37
Non-Ad Valorem Assessments					
Code	Levyng Authority	Amount			
F052	Sarasota County Fire Rescue	\$141.12			
G64A	Solid Waste Service District	\$159.48			
I006	Sewer-Phillippi Creek K	\$165.00			
W056	Stormwater Utility	\$81.89			
Total Assessments					\$547.49
Taxes & Assessments					\$1,620.86
If Paid By					Amount Due
					\$0.00

EX "B"

Date Paid	Transaction	Receipt	Item	Amount Paid
11/21/2011	PAYMENT	8014043.0001	2011	\$1,556.03

Prior Year Taxes Due
NO DELINQUENT TAXES